

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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PATRICK ALLEN LANG,

Petitioner,

Case No. 5:04-CV-109

v.

Hon. Robert J. Jonker

DAVID GUNDY,

Respondent.

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**ORDER AND JUDGMENT**  
**APPROVING REPORT AND RECOMMENDATION**

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 34) filed on May 29, 2007. Petitioner filed her Objections to the Report and Recommendation (docket # 36) on June 8, 2007.

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, or any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify

the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Fed R. Civ. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to Magistrate Judge Brenneman; the Report and Recommendation itself; and Petitioner's objections. After its review, the Court finds Magistrate Judge Brenneman's Report and Recommendation to be both factually sound and legally correct.

Petitioner makes one objection that is not addressed in the Report and Recommendation. Petitioner claims that the Report and Recommendation exhibits Magistrate Judge Brenneman's bias towards Petitioner. The Court finds that this objection is without merit. Petitioner points to no events, extrinsic or intrinsic to Magistrate Judge Brenneman's review, that evidence corruption or actual bias on the part of Magistrate Judge Brenneman, and the Court is not aware of even a single case finding bias under similar facts. A judge's remarks do not constitute bias unless they "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994). "The words [bias and prejudice] connote a favorable or unfavorable disposition or opinion that is somehow *wrongful or inappropriate*, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess . . . or because it is excessive in degree." *Id.* at 550 (emphasis in original). Magistrate Judge

Brenneman's characterization of the events as a "heinous crime spree," and his reference to the crime as a "rape," rather than "criminal sexual conduct," do not reflect such a high degree of antagonism as to make fair judgment impossible. His recommendation is not wrongful or inappropriate; it is supported by the record.

**ACCORDINGLY, IT IS ORDERED** that the Report and Recommendation of the Magistrate Judge, filed May 29, 2007, is approved and adopted as the opinion of the Court.

**IT IS FURTHER ORDERED** that Petitioner's 28 U.S.C. § 2254 petition for habeas relief is DENIED.

Dated: October 1, 2007

/s/ Robert J. Jonker  
ROBERT J. JONKER  
UNITED STATES DISTRICT JUDGE